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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,376	12/12/2005	Dieter Bechtold	069236-4827	9083
26371 7590 08/18/2009 FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306				
EXAMINER				
SCULLY, STEVEN M				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
08/18/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/560,376

Applicant(s)

BECHTOLD ET AL.

Examiner

Steven Scully

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-15 and 20-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Dah-Wei D. Yuan/
Supervisory Patent Examiner, Art Unit 1795

/Steven Scully/
Examiner, Art Unit 1795

Continuation of 11. Other: In response to applicant's arguments:

Initially, applicant argues that Ovshinsky et al. teach away from the combination of the Final Rejection. The Examiner respectfully disagrees. Ovshinsky et al. do disclose heat becomes a particular problem in sealed NiMH prismatic cells having pasted positive and pasted negative electrodes and a plastic case. Column 6, lines 59-61. However, Ovshinsky et al. further disclose "heat generated during charging and discharging NiMH batteries is normally not a problem in small consumer batteries or even in larger batteries when they are used singly for a limited period of time. For example, heat is rarely a problem with lead acid automobile batteries used to start internal combustion engines. But, large batteries that serve as a continual power source...do generate sufficient heat on charging and discharging to affect the ultimate performance of the cell." See column 3, lines 34-45. Therefore, the use of a plastic casing in a NiMH battery is taught to be acceptable by Ovshinsky et al., while dependent on the size of the cell and the intended use of the cell. Thus, it is the position of the Examiner that Ovshinsky et al. do not teach away from a plastic casing.

Secondly, applicant argues that Walsh is non-analogous art. This argument was addressed in the Final Rejection and remains the position of the examiner. As previously stated, the purpose of the Walsh reference is not to show laser welding of a battery particularly, but to show laser welding of a plastic container. It is well known to laser weld battery cases. It would have been obvious to use a translucent and opaque layer in laser welding as taught by Walsh et al. in any plastic container in order to join separate portions of the container. And, while leakage of the electrolyte is an issue with regard to a weld in a battery, it is unclear how the technique of Walsh et al. would not be adequate in sealing of an interface. In fact, it seems that the technique would provide a larger surface area of interfacial welding, thus providing an improved seal opposed to laser welding along the edge of an interface only.

Lastly, applicant argues that the combination does not disclose "a sealing element comprising a supporting surface which lies flat against the housing wall at an interface" as recited in claim 1, and a "sealing element provided in the at least one aperture of the housing wall and comprising a supporting surface which lies flat against the housing wall at an interface." It is the position of the examiner that the claimed limitation is met. The member (5) has an upwardly extending neck (6) where the member (5) can be welded to a corresponding neck (7) of the cover (2). See abstract; Fig. 1. Therefore, the sealing element, i.e. member (5), has a surface, i.e. the welded surface of the extending neck (6), which lies flat against the housing wall at an interface, i.e. where the extending neck (6) and the corresponding neck (7) are connected.